

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

MARTIN J. WALSH,

Plaintiff,

v.

Case No. 21-C-401

PINNACLE MACHINE LLC,
DONALD MILLER,
JENNIFER MILLER, and
PINNACLE MACHINE SAVINGS &
RETIREMENT PLAN,

Defendants.

ORDER FOR DEFAULT JUDGMENT

Plaintiff Martin J. Walsh, Secretary of Labor, United States Department of Labor (the “Secretary”), Plaintiff in the above-styled action, having filed his Complaint and Defendants Pinnacle Machine, LLC (“Pinnacle”), Donald Miller, Jennifer Miller, and Pinnacle Machine Savings & Retirement Plan (“Plan”) (collectively, “Defendants”) having been duly served, and Defendants having failed to plead or otherwise defend within the time prescribed by law, and default of the Defendants having been duly entered by this Court on July 8, 2021, and the amount owed by Defendants having been verified by the attested declaration of the Secretary’s investigator; now, therefore, upon motion of the Secretary and for cause shown,

JUDGMENT IS HEREBY ENTERED against Defendants Pinnacle, Donald Miller, Jennifer Miller, and the Plan in accordance with the prayer of the Complaint in the above-styled action; and it is:

ORDERED, ADJUDGED, AND DECREED that:

1. Defendants Pinnacle, Donald Miller, and Jennifer Miller are permanently enjoined from violating the provisions of Title I of ERISA, 29 U.S.C. § 1001 *et seq.*;

2. Defendants Pinnacle, Donald Miller, and Jennifer Miller shall correct the prohibited transactions in which they engaged;

3. Defendants Pinnacle, Donald Miller, and Jennifer Miller are jointly and severally liable to the Plan in the total amount of \$41,869.59 for their fiduciary breaches:

a. This amount consists of \$27,114.16 in unremitted employee salary deferral contributions during the period from January 8, 2016 through September 13, 2019;

b. This amount also consists of \$14,755.43 in lost opportunity costs for failing to remit \$27,114.16 in unremitted salary deferral contributions and failing to timely remit \$58,483.10 during the period from January 8, 2016 through September 13, 2019, calculated pursuant to 26 U.S.C. § 6621 and the actual rate of return on the Plan's investments;

4. Within 30 days of entry of this Default Judgment, Defendants Pinnacle, Donald Miller, and Jennifer Miller shall restore \$27,114.16 to the Plan in unremitted employee salary deferral contributions;

5. Within 30 days of entry of this Default Judgment, Defendants Pinnacle, Donald Miller, and Jennifer Miller shall restore \$14,755.43 in associated lost opportunity costs incurred by the Plan as a result of fiduciary breaches calculated through August 4, 2021;

6. Defendants Pinnacle, Donald Miller, and Jennifer Miller shall ensure that the Plan credit these monies, referred to in paragraph 3 above, to the investment accounts of all Plan participants, except Defendants Donald Miller and Jennifer Miller, who: (1) were employees of Pinnacle, (2) were Plan participants during the period January 8, 2016 through September 13,

2019, (3) had voluntary employee salary deferral contributions withheld from their pay for contribution to the Plan during this period and such contributions were not remitted or were remitted to the Plan in an untimely manner, and (4) have not received a distribution of their fully vested account balance as of the date of the entry of this Default Judgment. The Plan shall allocate the \$27,114.16 in unremitted employee salary deferral contributions to the individual investment accounts of the Plan's participants in an amount equal to the unremitted contributions and participant loan repayments owed to each participant. For any participant who is no longer a current participant, all allocated amounts owed pursuant to this Judgment shall be sent directly to the Plan participant.¹ The Plan shall allocate the \$14,755.43 in lost opportunity costs to each participant based on the participant's percentage share of the total unremitted contributions or untimely remitted contributions owed to Plan participants. In restoring the monies identified in paragraph 3 above, Defendants Pinnacle, Donald Miller, and Jennifer Miller shall send a check for the benefit of the Plan to Mid-Atlantic Trust Company, along with allocation directions. Defendants Pinnacle, Donald Miller, and Jennifer Miller shall send EBSA Regional Director, Jeffrey Monhart, 230 S. Dearborn St., Suite 2160, Chicago, IL 60604, a copy of the check sent to Mid-Atlantic Trust Company, on behalf of the Plan, within 3 days of its issuance and proof of payment of the check within 30 days of its issuance;

7. Defendants Pinnacle, Donald Miller, and Jennifer Miller shall take appropriate actions to locate and to notify each participant of the Plan of his/her entitlement to a restoration of losses. Appropriate actions include complying with the guidance in EBSA Field Assistance Bulletin 2021-01, Temporary Enforcement Policy Regarding the Participation of Terminating Defined Contribution Plans in the PBGC Missing Participants Program (Jan. 12, 2021) available

¹ Participant includes a participant's beneficiary when the participant is deceased.

at <https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2021-01>; EBSA Compliance Assistance Release 2021-01, Terminated Vested Participants Project Defined Benefit Pension Plans (Jan. 12, 2021) available at <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/retirement/missing-participants-guidance/compliance-assistance-release-2021-01>; and EBSA Missing Participants – Best Practices for Pension Plans (Jan. 12, 2021) available at <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/retirement/missing-participants-guidance/best-practices-for-pension-plans>;

8. Within 120 days of the entry of this Default Judgment, in accordance with ERISA, Defendants Pinnacle, Donald Miller, and Jennifer Miller will distribute to the participants all Plan assets and will terminate the Plan;

9. Within 30 days from the date the Plan is fully terminated, Defendants Pinnacle, Donald Miller, and Jennifer Miller shall provide satisfactory proof of such termination, including proof of issuance of the Plan's participant distributions, to EBSA Regional Director Monhart at the address set forth in Paragraph 6 above;

10. Defendants Pinnacle, Donald Miller, and Jennifer Miller shall be permanently enjoined from serving or acting as fiduciaries or service providers with respect to employee benefit plans subject to ERISA, except to the extent necessary for Defendants Pinnacle, Donald Miller, and Jennifer Miller to restore losses owed to the Plan participants pursuant to this Default Judgment and to administer the Plan's termination, identified in paragraph 7 above; and

11. Awarding the Secretary costs of this action.

Dated at Green Bay, Wisconsin this 12th day of August, 2021.

s/ William C. Griesbach

William C. Griesbach
United States District Judge